

**BUD SHUSTER**

# Rejecting Congress' covert straitjacket

**D**espite an unprecedented diplomatic and military victory and popular approval for his steadfast good judgment and leadership in the Persian Gulf crisis, President Bush still faces congressional attempts to reduce his options for dealing with future international crises so successfully.

In last year's intelligence authorization bill, Congress tried to severely hamstring the president's ability to carry out his constitutional responsibilities for the conduct of our foreign affairs and protection of our national security, forcing him to pocket veto that bill. Congress and the president are now negotiating on a rewriting of the vetoed bill.

The president singled out one provision of the bill as the principal reason for his veto. Specifically, it included in its definition of covert action any U.S. "request" to a foreign government or private citizen to perform a covert action for the United States. Left unclear is what constitutes a "request."

Mr. Bush observed that many normal communications between U.S. and foreign officials might be viewed as such a "request," because covert actions usually involve varieties of political, rather than military or paramilitary, action. It could then be argued that a formal written authorization for a covert action should have been reported to Congress. This is a gross infringement on the president's constitutional authority to conduct foreign policy.

The Persian Gulf crisis illustrates the dangers inherent in the bill's ambiguous language. Allied action has been financed by many nations and requires multiple U.S. negotiations on political and military measures with 28 coalition allies, plus coordinated worldwide efforts to counter terrorist incidents.

Under the bill, would discussion with an ally regarding possible solutions to a problem, or favorable comments on a foreign official's confidential remarks about how his nation might deal with a specific issue of mutual interest, be interpreted as effecting a third-party "covert action"? Could an offhand comment or a suggestion come back to haunt our diplomats, even lead some overzealous independent counsel to pursue criminal charges against them?

Suppose a friendly government informs us it has a unique opportunity to eliminate a terrorist cell harbored by a hostile third country. U.S. nationals are held hostage at the site, and the friendly government is willing also to attempt a rescue for us — but, because of the danger to their personnel, only if knowledge of the operation is restricted to the president and his top advisers until it is concluded. Do we wish to refuse the president a chance to rescue American hostages? Or to deter allies from even offering such a rescue, for fear the information would have to be transmitted immediately to Congress?

Before opening their mouths, American diplomats might have to perform mental gymnastics regarding possible interpretations of the intelligence oversight law. That is why Mr. Bush said this new language "could have a chilling effect on the ability of our diplomats to conduct highly sensitive discussions concerning projects that are vital to our national security" and "could seriously impair the effective conduct of our nation's foreign relations."

The president also objected to a congressional report accompanying the vetoed bill. It sought to very narrowly reinterpret the scope of the president's option, retained from the existing 1980 law, to defer prior re-

porting of covert actions to Congress. He may instead report "in a timely fashion" at some later point. The objectionable report alleged that "in a timely fashion" means that the president could defer reporting only in urgently time-sensitive circumstances and even then only for a few days.

This is revisionist history relying primarily on a 1980 floor speech by one senator, Walter Huddleston, Kentucky Democrat. It is clearly inconsistent with statements by key legislators during House floor debate, including Edward Boland, Massachusetts Democrat, then chairman of the House Intelligence Committee. That "in a timely fashion" phrase was deliberately left vague, for it is impossible to foresee the delay that might be justified under innumerable potential scenarios and because of a fundamental disagreement between some in Congress and the executive branch about their respective constitutional authorities.

Congress sought to evade a veto by placing the offensive interpretation in a report rather than the bill itself. However, that report language violated the spirit of an agreement between Mr. Bush and the leadership of the House and Senate intelligence committees. The report tried to establish an interpretation that could later be cited as authoritative. It is a cross on which the executive could be crucified, an interpretation to which any administration could be bound politically, if not legally.

In 10 years, there have been only two incidents of delayed notice. One involved a successful operation to spirit from Iran U.S. diplomats who had escaped being taken hostage and hid in the Canadian Embassy. In that case, at the Canadians' request, notice to Congress was delayed

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three months, until the Americans were out of Iran. The slightest leak could have brought death to the Americans and probably the Canadians, too. If the report language interpretation had been in effect, then-President Jimmy Carter could not have undertaken that covert action to rescue our diplomats from harm's way.

The president's concerns about these legislative encroachments are well-founded, and his veto was justified. Let us hope that Congress finds the wisdom to accommodate the president's legitimate concerns.

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